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Dr Ron Ben-David
Chairperson
Essential Services Commission
Level 37, 2 Lonsdale St
Melbourne VIC 3000

Submitted electronically: RetailEnergyReview@esc.vic.gov.au

Dear Dr Ben-David,

Re. Draft Decision - Helping customers engage confidently in the retail energy market

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to respond to the Essential Services Commission's (the Commission's) Draft Decision, *Helping customers engage confidently in the retail energy market*.

In principle, Red and Lumo support the Commission's proposal to align retailers' obligations when marketing their offers with those under the Australian Energy Regulator's (AER's) Retail Pricing Information Guideline (RPIG). This will extend a recently established framework and promote national consistency, thereby reducing compliance costs for retailers who operate across numerous jurisdictions. At the consultation workshop on 22 January, the Commission advised that the Department of Energy, Land, Water and Planning (DELWP) would provide the functionality through Victorian Energy Compare, we provide this submission on the basis of this advice.

However, the Victorian model differs from the national framework in that retailers and third parties will have an obligation to host Basic Product Information Documents (BPIDs) that are generated by Victorian Energy Compare. This means the Commission must address two critically important issues if it plans to implement these measures from 1 July:

- The readiness of Victorian Energy Compare to generate and then provide BPIDs to retailers and third parties without error. This includes an appropriate interface between Victorian Energy Compare and retailers.
- The precise nature of retailers' and third parties' obligations under the Energy Retail Code (ERC).

The Commission must delay commencement if DELWP cannot provide assurances about the readiness of Victorian Energy Compare. Given the current pipeline of regulatory initiatives and their system implications, it is simply not feasible for retailers to build the capability to produce BPIDs by 1 July.

Retailers are concentrating on implementing numerous measures, the most significant of which are the Victorian Default Offer and the Commission's Final Decision to implement Recommendations 3F to H of the *Independent Review into the Electricity and Gas Retail Markets in Victoria* (the Thwaites Review). In our case, we would require between 9 and 12 months from the Commission's final decision to develop this capability. It would also generate considerable costs.

Both of these factors are relevant to how the Commission should implement its Decision. We share the views of the Australian Energy Council that any changes to the ERC should be simple obligations for retailers to display and provide the BPID that Victorian Energy Compare generates, rather than prescribing the form and content of what retailers must give to their customers. Otherwise, retailers and third parties are subject to risks that they cannot possibly manage, namely, the ongoing technical capability of Victorian Energy Compare to produce BPIDs and transfer them to retailers in their complete form.

Looking ahead, this approach provides the Commission with flexibility to amend BPIDs if further research indicates that consumers prefer different content or in a different form to help them compare competitive retail offers.

Our support for the Draft Decision is also subject to the proviso that the Commission adopt the same provisions and obligations - in terms of when retailers and third parties must notify and provide BPIDs to consumers, for example - as those under the RPIG. We cannot realistically assess the implications on our systems and processes until we see the proposed amendments.

Therefore, we look forward to further opportunities to comment on a second Draft Decision and specific amendments to the ERC as the Commission continues its consultation.

In terms of the content of BPIDs, we acknowledge this reflects the AER's extensive behavioural research and will therefore offer valuable information to consumers wanting to compare retail offers across retailers. However, the Commission and AER must both recognise that this is a relatively new regulatory initiative and its benefits haven't yet been fully established. Furthermore, the consumption levels underpinning the estimates of annual costs for households of different sizes are not perfect proxies for many Victorian households. Consumption patterns vary substantially over time and within the prescribed groups (for example, depending on seasonal factors and incomes levels respectively).

The Commission and DELWP should take steps to ensure that Victorian consumers who access BPIDs through Victorian Energy Compare understand that the annual estimates in the comparison tables are based on 'typical' consumption and household types. As a consequence, they are only a guide as to what they might pay.

Finally, the Commission needs to consider the practicalities of implementation, given the relatively short time for implementation between its final decision and 1 July, and irrespective of Victorian Energy Compare's technical readiness and the form of the ERC changes.

The Commission will be aware that Energy Made Easy generates and hosts BPIDs, whereas it proposes that retailers and third parties host these documents for Victorian offers. This will necessitate some system changes and will be challenging for some third parties (and probably for some retailers).

One option might be for the Commission to delay or at least stagger implementation. We note the AER adopted this approach to the new RPIG provisions, mandating that retailers comply with the new provisions from 1 October 2018 and that third parties comply from 1 January 2019.

Another option is for the Commission to allow third parties (who will be obligated to provide BPIDs or display links to BPIDs on their websites) to be able to refer consumers to a retailer or display a link to the BPID on a retailer's website. This would avoid them having to make significant system changes.

Regardless of which option the Commission chooses, our concern is that consumers could receive misleading or incomplete information and retailers could be exposed to unreasonable compliance risks under a more rushed approach.

Response to specific questions

The following are our responses to the questions that Commission posed at its technical consultation workshop on 22 January.

1. Should fact sheets be available for small business and residential customers?

The AER's policy decision was to exclude the comparison table on BPIDs for retail offers to small business consumers and for more complex residential offers, such as those based on maximum demand network charges. The Commission should adopt the same position.

BPIDs are intended to assist consumers to make informed decisions by providing an estimate of what they could pay under different offers. However, annual estimates that are based on some average are not suitable for the broader small business cohort, which differs substantially in terms of the profile of its energy usage (timing and intensity) and exposure to economic conditions.

Similarly, the annual costs paid by consumers who face complex tariffs is driven by the timing of their usage and this could vary significantly between different consumers and over time. It is highly unlikely that simple cost estimates based on assumed energy use in different time periods will align with the choices that these consumers make to either use or not use energy during defined peak periods. In both cases, annual estimates based on a typical profile would mislead consumers, eroding trust in both the competitive market and the government comparator tools.

The AER will address this by enhancing the functionality of Energy Made Easy in the coming months, and DELWP and the Commission should do the same with Victorian Energy Compare. The flexibility to revise BPIDs to improve their value to consumers would be a further benefit of simply prescribing in the ERC that retailers and third parties reference the BPIDs that Victorian Energy Compares creates.

Regulators should develop these tools incrementally as they better understand the nature and extent of any problems that consumers face when they participate in the market and have the capability to address them in an efficient and effective way, rather than exacerbating those problems.

2. *What search mechanisms might a consumer use to identify and locate the factsheet that is applicable to them?*

In our experience, customers - existing and prospective - generally refer to the name and features of a plan when discussing our retail offers, rather than unique plan IDs. This reflects the relatively small number of generally available offers we have in the market. The forthcoming clear advice entitlement will also ensure that all retailers clearly explain the important aspects of a range of their offers so consumers can make informed decisions.

3. *When should retailers upload plan information into VEC and when should their factsheets be publicly available?*

The Commission should adopt the same timeframes and obligations for uploading and making plans available as in the RPIG.

4. *Should there be a date reference (either offer start or expiry date) included in the factsheet?*

The Commission should align with the RPIG on this point. There is no need to mandate an expiry date as retailers have a strong incentive and obligations under Australian Consumer Law to ensure that customers fully understand the terms and conditions, including the availability of their offers.

Estimated reads

We also support the Commission's decision to align with the national framework and establish a Victorian framework that allow consumers to request an adjusted bill after they received as estimated bill (subject to certain conditions).

However, the Commission should be aware that some Victorian consumers have entered into contracts that include an agreement to receive estimated bills under certain circumstances. Some retailers offer bill smoothing and monthly fixed price products, for example. These contracts align with consumers' needs and preferences for how they will pay for their energy usage

Therefore, we recommend that the Commission not apply this rule where consumers have explicitly agreed to receive estimated bills in a market retail contract.

The Commission should also consider a limit on how many customer self reads can occur. Estimated reads tend to signify an underlying problem (of unsafe or limited access, for example) that prevents an actual read and allowing a customer to provide a self-read might prolong the issue.

Retailers will use the opportunity to work with the customer to resolve the underlying issue but a limit on the number of self-reads will hasten this.

Network and wholesale bill recalculation

The obligation to change a customer's bill should also be reflected in the network and wholesale markets, and in the metering data files that AEMO uses for settlement. In our view, the new rule means that a customer self read is of a higher standard than an estimated read and this be reflected in the rules and the metering data files. This shouldn't be onerous to implement as there are already existing transactions in place in most markets to allow retailers to pass customer self reads to distribution businesses.

We consider this could also become a problem when customers request data under the Consumer Data Right, depending on the final legislation and the manner in which energy market data is designated. There will be a mismatch between an energy bill and the metering data that a customer or an authorised data recipient will receive if they request it from the distributor or AEMO, unless they are reconciled in some way.

About Red and Lumo

We are 100% Australian owned subsidiaries of Snowy Hydro Limited. Collectively, we retail gas and electricity in Victoria, New South Wales, South Australia and Queensland to over 1 million customers.

Red and Lumo thank the Commission for the opportunity to respond to the Draft Decision. Should you wish to discuss aspects or have any further enquiries regarding this submission, please call Geoff Hargreaves, Regulatory Manager on [REDACTED].

Yours sincerely

A handwritten signature in black ink, appearing to be "Ramy Soussou". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ramy Soussou
General Manager Regulatory Affairs & Stakeholder Relations
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